

NOT INCLUDED IN  
BOUND VOLUMES

HGB  
Monroe, NJ

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

VERTIS, INC.

Employer

and

Case 22-RC-061844

LOCAL 1, AMALGAMATED LITHOGRAPHERS  
OF AMERICA, GCC/IBT

Petitioner

DECISION AND DIRECTION

The National Labor Relations Board, by a three-member panel, has considered determinative challenged ballots and objections in an election held August 31, 2011, and the administrative law judge's report recommending disposition of them.<sup>1</sup> The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 37 for and 35 against the Petitioner, with 2 challenged ballots, a number sufficient to affect the election's results.

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<sup>1</sup> By letter dated February 17, 2012, the Employer argued that the President's recess appointments of Members Griffin and Block were unconstitutional and invalid. The Employer thus objected to the Board issuing a ruling or decision related to this case until it has a properly appointed lawful quorum. For the reasons set forth in *Center for Social Change, Inc.*, 358 NLRB No. 24 (2012), we reject this argument.

Having reviewed the record in light of the exceptions and briefs, the Board adopts the judge's findings<sup>2</sup> and recommendations.<sup>3</sup>

#### DIRECTION

IT IS DIRECTED that the Regional Director for Region 22 shall, within 14 days from the date of this Decision and Direction, open and count the ballots of Frank Swercheck and Luisa Diaz. The Regional Director shall then serve on the parties a revised tally of ballots and issue the appropriate certification.

Dated, Washington, D.C., November 30, 2012.

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Brian E. Hayes,

Member

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<sup>2</sup> The judge was sitting as a hearing officer in this representation proceeding. The parties have excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

<sup>3</sup> We adopt the hearing officer's recommendation to overrule the challenges to the ballots of Frank Swercheck and Luisa Diaz. In doing so, we rely on the credited testimony of Swercheck that he was not assigned to be an interim or temporary supervisor. We also rely on the implicitly credited testimony of Manual Insertion Supervisor Diane Ryder that she remained in that position after being assigned the Scheduler duties and that, although Diaz was given more responsibility to "oversee" other employees in the Manual Insertion department, she needed Ryder's approval in order to deal with any employee or work-related problems. Thus, we find that the Union failed to show that these employees had actually been placed in the Manufacturing Manager or Manual Insertion Supervisor position on an interim basis, and therefore these employees remained in their team leader positions during the relevant period. We further note that the Union has failed to present any evidence that, in their team leader positions (which were stipulated to be non-supervisory), Swercheck and Diaz had been given the authority to exercise, or had ever exercised, any 2(11) indicia using independent judgment.

Last, with respect to another issue, the hearing officer cited the judge's decision in *Santa Rosa Memorial Hospital* (20-RC-018241), JD(SF)-18-10, which we note was subsequently adopted by the Board in an unpublished order dated December 29, 2010.

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Richard F. Griffin, Jr.,      Member

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Sharon Block,      Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD